

SECTION 6

DES/DDD STANDARD TERMS AND CONDITIONS FOR QUALIFIED VENDORS

6.1 Definition of Terms

As used in this Request for Qualified Vendor Applications (“RFQVA”) and any resulting Agreement, the terms listed below are defined as follows:

- 6.1.1 “Agency” means an organization that has a Federal Employer Identification Number (“FEIN”) and employs one or more direct service staff other than the owner.
- 6.1.2 “Agreement” means the Qualified Vendor Agreement which is a legally binding contract to provide community developmental disability services and includes the following: the Request for Qualified Vendor Applications (“Solicitation”) including all solicitation amendments and the Qualified Vendor’s approved application (“Application”). The Request for Qualified Vendor Applications includes service requirements/scope of work, terms and conditions, and services specifications. The approved Application includes vendor specific descriptions, policies, assurances, and financial information.
- 6.1.3 “Agreement Amendment” means either a solicitation amendment or a Division-approved amendment to an application.
- 6.1.4 “Agreement Services” means the services to be delivered by the Qualified Vendor under this Agreement.
- 6.1.5 “AHCCCS” means the Arizona Health Care Cost Containment System as established by Arizona Revised Statutes (A.R.S.) § 36-2901 *et seq.*, and defined by Arizona Administrative Code (A.A.C.) R9-22-101.B.
- 6.1.6 “AHCCCSA” or “Administration” means the Arizona Health Care Cost Containment System Administration.
- 6.1.7 “AHCCCS Minimum Subcontract Provisions” means the AHCCCS minimum requirements for the Division’s contractors and subcontractors providing services to members eligible for DD/ALTCS and/or receiving Title XIX (ALTCS) funds.
- 6.1.8 “ALTCS” means the Arizona Long Term Care System as defined by A.A.C. R9-28-101.B.2.
- 6.1.9 “Applicant” means a vendor who submits an application in response to the Request for Qualified Vendor Applications.

- 6.1.10 “Application” means a completed copy of the Application and Qualified Vendor Agreement Award form submitted in hardcopy to the Division; the required information in the Qualified Vendor Application and Directory System submitted electronically to the Division via the Division’s website, and approved by the Division; a hardcopy of the required information entered into the Qualified Vendor Application and Directory System submitted to and approved by the Division; and all applicable submittals required in the Qualified Vendor Application Assurances and Submittals form submitted to and approved by the Division.
- 6.1.11 “Business Day” means between the hours of 8:00 a.m. and 5:00 p.m. Arizona time any day of the week other than Saturday, a legal holiday, or a day on which the Division is authorized or obligated by law or executive order to close.
- 6.1.12 “Clean Claim” means claims that may be processed without obtaining additional information from the provider of service or from a third party but does not include claims under investigation for fraud and abuse or claims under review for medical necessity (A.R.S. § 36-2904.G.1).
- 6.1.13 “Client,” “Member,” “DD/ALTCS Member,” “Consumer,” or “Individual” means a person who is authorized to receive services through the Division.
- 6.1.14 “Community Developmental Disability Services” means any service or support the Division is authorized to purchase on behalf of individuals with developmental disabilities and their families or guardians.
- 6.1.15 “Days” means calendar days unless otherwise specified.
- 6.1.16 “Department” means the Arizona Department of Economic Security (ADES), unless otherwise indicated.
- 6.1.17 “Division” or “DDD” means the Division of Developmental Disabilities within the Department of Economic Security. References to rules, policies, or procedures of the Division shall be deemed to include all rules, policies, and procedures of the Department.
- 6.1.18 “Effective Date” means the date that the Procurement Officer signs the Qualified Vendor Agreement Award, unless another date is specifically stated in the Agreement.
- 6.1.19 “Encounter” means the record of a service submitted to or by the Division and processed by AHCCCS that is rendered by a provider registered with AHCCCS to a member who is enrolled with the Division on the date of service for which the Division incurs a financial liability (A.A.C. R9-22-701).

- 6.1.20 “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 6.1.21 “Individual Independent Provider” as referenced in this document means a person who is qualified to provide the service, does not have any employees, has a provider identification number, and has an individual service agreement with the Division to provide one or more of the following services: Attendant Care; Habilitation, Hourly Support; Homemaker; Respite; or Habilitation, Individually Designed Living Arrangement.
- 6.1.22 “Individual Support Plan” or “ISP” means a written statement of services to be provided to a Division member with developmental disabilities including habilitation goals and objectives and a listing of the services, if any, the member is authorized to receive. The ISP incorporates and replaces the Individual Program Plan, the placement evaluation, the individualized service program plan and the service program plan used in A.R.S. § 36-557 (as may be amended). ISP incorporates the Individual Family Service Plan (“IFSP”) as defined in Section 809.1 of the Division’s Policy and Procedures Manual as well as a Person Centered Plan, which describes the type, frequency, and duration of the services and supports needed to achieve the appropriate outcomes for a consumer. The ISP is also referred to as the “planning document”.
- 6.1.23 “Individual Support Plan Team” or “ISP Team” means a group of persons including the member, the member’s representative, and other persons selected by the member, assembled by the Division and coordinated by the member’s Support Coordinator to develop the member’s planning document [e.g., Individual Support Plan (ISP)].
- 6.1.24 “May” indicates something that is not mandatory but permissible.
- 6.1.25 “Procurement Officer” means the person duly authorized to enter into and administer Agreements and make written determinations with respect to the Agreement or his/her designee.
- 6.1.2.5 “Professional Independent Provider” means a person who is licensed or certified under Title 32, A.R.S., who provides services for members as a Qualified Vendor and is not an employee or a subcontractor of a provider agency.
- 6.1.26 “Qualified Vendor” means any person or entity that has an Agreement with the Division of Developmental Disabilities.
- 6.1.27 “Record” means any data in any form that is required to be created and/or maintained to document performance of the Agreement.

- 6.1.28 “Shall” or “Must” indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of an Application or termination of the Agreement, in whole or in part.
- 6.1.29 “Should” indicates something that is recommended but not mandatory. If the Applicant fails to provide recommended information, the State may, at its sole option, ask the Applicant to provide the information or evaluate the Application without the information.
- 6.1.30 “Subcontract” means any arrangement, expressed or implied, between the Qualified Vendor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of this Agreement.
- 6.1.31 “State” means the State of Arizona and the Department or Agency of the State that executes the Agreement.
- 6.1.32 “Third Party Liability” means the resources available from a person or entity that is or may be, by Agreement, circumstances, or otherwise, liable to pay all or part of the medical expenses incurred by a Division client (A.A.C. R6-6-101.71 and A.A.C. Title 9, Chapter 22, Article 10).
- 6.1.33 “Third Party Payor” means any individual, entity or program that is or may be liable to pay all or part of the medical cost of injury, disease or disability of a Division client (A.A.C. R6-6-101.72).

6.2 Agreement Interpretation

6.2.1 Arizona Law.

The Arizona law applies to this Agreement including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code; A.R.S. Title 41, Chapter 23, and its implementing rules; A.A.C. Title 2, Chapter 7; and A.R.S. § 36-557(B) and its implementing rules.

6.2.2 Implied Agreement Terms.

Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated in it.

6.2.3 Agreement Order of Precedence.

In the event of a conflict in the provisions of the Agreement, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 6.2.3.1 Qualified Vendor Award;
- 6.2.3.2 DES/DDD Standard Terms and Conditions for Qualified Vendors;
- 6.2.3.3 Service Requirements/Scope of Work and Service Specifications;
- 6.2.3.4 Rates;
- 6.2.3.5 Information entered into the Qualified Vendor Application and Directory System (“QVADS”) (most recently approved); and
- 6.2.3.6 Attachments to information entered into QVADS (most recently approved).
- 6.2.4 Relationship of Parties.

The Qualified Vendor under this Agreement is an independent contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement. In the event that the Qualified Vendor or its personnel is sued or prosecuted for conduct arising from this Agreement, the Qualified Vendor or its personnel will not be represented by the Department or the Arizona Attorney General. In addition, taxes or Social Security payments will not be withheld from a State payment issued hereunder and the Qualified Vendor shall make arrangements to directly pay such expenses.

6.2.5 Severability.

The provisions of this Agreement and any amendments to the Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement or the amendment.

6.2.6 No Parol Evidence.

This Agreement is intended by the parties as a final and complete expression of their Agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding, either oral or in writing, shall be binding.

6.2.7 No Waiver.

Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

6.2.8 Headings.

The section headings used in the Agreement are for reference and convenience only and shall not enter into any interpretation of the Agreement.

6.3 Agreement Administration and Operation

6.3.1 Records.

6.3.1.1 Under A.R.S. §§ 35-214 and 35-215, the Qualified Vendor shall retain and shall contractually require each subcontractor to retain all data and other records (“records”) relating to the acquisition and performance of the Agreement for a period of five (5) years after the date of final payment under the Agreement or if subject to Health Insurance Portability & Accountability Act (“HIPAA”), which requires a period of six (6) years from the date of final payment. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Qualified Vendor shall produce a legible copy of any or all such records.

6.3.1.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the State, shall be retained by the Qualified Vendor until such grievances, disputes, litigation, claims or exceptions have been resolved.

6.3.1.3 The Qualified Vendor shall provide all records requested by the Department or its attorneys (which may include, but is not limited to, requests relating to Adult Protective Services, Child Support Enforcement, or Child Protective Services), and/or the AHCCCSA and all information from its records relating to the performance of this Agreement that the Department or the AHCCCSA may reasonably require. The Qualified Vendor reporting requirements hereunder may include, but are not limited to, timely and detailed utilization statistics, information and reports. Unless otherwise agreed to by attorneys for the Department, records requested by such attorneys are to be provided prior to or on the date set forth in the request. If the Qualified Vendor receives the request less than seven (7) business days prior to the response date specified, the Qualified Vendor shall make diligent efforts to comply with the request, and call the requesting attorney regarding the status of its efforts to comply.

6.3.1.4 The Qualified Vendor shall follow all policies and procedures of the Division for the acceptance, retention, disposition, and accounting for member (client) funds. The Qualified Vendor also shall develop and maintain internal policies and procedures for the administration of such funds. All Division policies are posted on the Division’s website at www.azdes.gov/ddd.

- 6.3.1.5 The Division is responsible for submission of accurate Encounters to AHCCCSA for all Agreement services rendered to eligible members by the Qualified Vendor and any subcontractor. Claims filed by the Qualified Vendor are the basis of the encounter submission by the Division. Qualified Vendors shall work with the Division to ensure that Encounters effectively occur. This shall include adhering to Division Billing Requirements. Billing Requirements are posted on the Division website at www.azdes.gov/ddd.
- 6.3.1.6 Agreement service records will be maintained in accordance with this Agreement. Records shall, as applicable, meet the following standards:
- 6.3.1.6.1 Adequately identify the service provided;
- 6.3.1.6.2 Include personnel records, which contain applications for employment, job titles and descriptions, hire and termination dates, copies of the fingerprint clearance cards, wage rates, and effective dates of personnel actions affecting any of these items;
- 6.3.1.6.3 Include time and attendance records for individual employees to support all salaries and wages paid and claims for payment from the Division;
- 6.3.1.6.4 Include records of the source of all receipts and the deposit of all funds received by the Qualified Vendor;
- 6.3.1.6.5 Include original copies of billing or other records relating to disbursements including but not limited to invoices, statements, sales tickets, billings for services, deposit slips, etc., and a cash disbursement journal and cancelled checks to reflect all disbursements applicable to the Agreement;
- 6.3.1.6.6 Include a complete general ledger with accounts for the collection of all costs and/or fees applicable to the Agreement; and
- 6.3.1.6.7 Include copies of lease/rental contracts, mortgages and/or any other contracts, which in any way may affect Qualified Vendor expenditures.
- 6.3.1.7 Any such records not maintained shall mandate an audit exception in the amount of the inadequately documented expenditures.
- 6.3.1.8 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of final payment under the Agreement or if subject to HIPAA, a period of six (6) years from the date of final payment. Records which related to disputes, litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement to which exception has been taken by the state, shall be retained by the Qualified Vendor until such

disputes, litigations, claims or exceptions are resolved by way of a binding agreement, the rendering of a final judgment, or the claims have otherwise been dismissed.

6.3.2 Non-Discrimination.

In accordance with A.R.S. § 41-1461 *et seq.* and Executive Order 2009-09, the Qualified Vendor shall provide equal employment opportunities for all persons, regardless of race, color, religion, creed, sex, age, national origin, disability or political affiliation. The Qualified Vendor shall comply with the Americans with Disabilities Act.

6.3.2.1 Unless exempt under Federal law, the Qualified Vendor shall comply with Title VII of the Civil Rights Act of 1964 as amended, which prohibits discrimination on the basis of race, sex, national origin or religion. The Qualified Vendor shall comply with the Age Discrimination in Employment Act, which prohibits discrimination based on age. The Qualified Vendor shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The Qualified Vendor shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended.

6.3.2.2 If Qualified Vendor is an Indian Tribal Government, Qualified Vendor shall comply with the Indian Civil Rights Act of 1968. It shall be permissible for an Indian Tribal Qualified Vendor to engage in Indian preference in hiring.

6.3.2.3 The Qualified Vendor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of, or participation in, services on the basis of race, color, or national origin. The Qualified Vendor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in delivering services; and with Title II of the Americans with Disabilities Act, and the Arizona Disability Act, which prohibit discrimination on the basis of physical or mental disabilities in the provision of programs, services and activities.

6.3.2.4 The following shall be included in all publications, forms, flyers, etc. that are distributed to recipients of Agreement services:

“Unless expressly waived by the Division, under Titles VI and VII of the Civil Rights Act of 1964 (respectively “Title VI” and “Title VII”) and the Americans with Disabilities Act of 1990 (ADA) Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, *insert Qualified Vendor name here*) prohibits discrimination in admissions, programs, services, activities or employment based on race, color, religion, sex, national origin, age, and disability. The (*insert Qualified Vendor name here*) must make a reasonable accommodation

to allow a person with a disability to take part in a program, service, or activity. Auxiliary aids and services are available upon request to individuals with disabilities. For example, this means that if necessary, the (*insert Qualified Vendor name here*) must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the (*insert Qualified Vendor name here*) will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy please contact: (*insert Qualified Vendor contact person and phone number here*) Para obtener este documento en otro formato u obtener información adicional sobre esta política, (*insert Qualified Vendor contact person and phone number here*)”.

6.3.3 Audit.

6.3.3.1 Pursuant to A.R.S. § 35-214, at any time during the term of this Agreement and five (5) years, or if subject to HIPAA, a period six (6) years, from the date of final payment, the Qualified Vendor’s and/or any subcontractor’s books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Agreement or subcontract.

6.3.3.2 All Qualified Vendors are subject to the programmatic and fiscal monitoring requirements of each Department program to ensure accountability of the delivery of all goods and services.

6.3.3.2.1 The Qualified Vendor shall comply with the AHCCCS established financial viability standards. Current assets divided by current liabilities must be equal to or greater than a ratio of 1.00. Current assets may include any long-term investments that can be converted to cash within twenty-four (24) hours without significant penalty [(i.e., greater than twenty (20) percent)]. If current assets include a receivable from a parent company, the parent company must have liquid assets that support the amount of the inter-company loan.

6.3.3.3 The Qualified Vendor must prepare financial reports in accordance with Generally Accepted Accounting Principles (“GAAP”). Annual financial audit reports must be conducted in accordance with Generally Accepted Auditing Standards (“GAAS”) audited by an independent Certified Public Accountant. The Audit Opinion and the Memorandum on Internal Control must be submitted to the Division person designated to receive notices within thirty (30) days after completion of the audit unless a different time is requested and approved by the Division.

- 6.3.3.3.1 Audits of non-profit corporations receiving Federal or State monies required pursuant to Federal or State law must be conducted as provided in 31 United States Code (“U.S.C.”) Section 7501 *et seq.* and A.R.S. §35-181.03 and any other applicable statutes, rules, regulations, and standards.
- 6.3.3.3.2 A Qualified Vendor receiving five million dollars (\$5,000,000) or more in payments from the Department for Qualified Vendor services in any state fiscal year shall provide the Department the following: (a) Quarterly financial statements no later than sixty (60) days following the end of the quarter, and (b) Annual audited financial statements no later than thirty (30) days after the completion of the audit unless a different time has been requested and approved by the Division.
- 6.3.3.4 A Qualified Vendor receiving payments from the Department for Qualified Vendor services in any state fiscal year in the amount of two million dollars (\$2,000,000) to \$4,999,999 (four million, nine-hundred ninety-nine thousand, and nine-hundred ninety-nine dollars) shall provide the Department the following: (a) Semi-annual financial statements no later than sixty (60) days following the end of the second quarter; and (b) Annual financial statements that have been reviewed by an independent Certified Public Accountant. Review report must consist of at least a Balance Sheet, Income Statement and Statement of Cash Flows. Annual financial statements shall be submitted to the Division no later than thirty (30) days after the completion of the review unless a different time has been requested and approved by the Division.
- 6.3.3.5 A Qualified Vendor receiving payments from the Department for Qualified Vendor services in any state fiscal year in the amount of one million dollars (\$1,000,000) to \$1,999,999 (one million, nine-hundred ninety-nine thousand, and nine-hundred ninety-nine dollars) shall provide the Department an annual financial compilation that has been compiled by an independent Certified Public Accountant. A compilation must consist of at least a Balance Sheet, Income Statement and Statement of Cash Flows. Annual financial statements shall be submitted to the Division no later than thirty (30) days after the completion of the compilation unless a different time has been requested and approved by the Division.
- 6.3.3.6 A Qualified Vendor receiving payments from the Department for Qualified Vendor services in any state fiscal year less than one million dollars (\$1,000,000) shall provide the Department an annual financial statement that consists of a Balance Sheet, Income Statement, and Statement of Cash Flows within one hundred twenty (120) days after fiscal year end.
- 6.3.4 Notices.

All Notices from the Division to Qualified Vendors shall reference the Solicitation RFQVA. Notices from Qualified Vendors to the Division shall reference the Agreement Number. Notices to the Qualified Vendor required by this Agreement may be made by the State via email to the email contact indicated on the Qualified Vendor Application form submitted by the Qualified Vendor. Notices to the Qualified Vendor by the State may be made solely via email. Therefore, the Qualified Vendor is required to keep their Qualified Vendor Agreement email contact and address updated at all times to ensure receipt of notices from the State. Notices to the State required by the Agreement shall be mailed by the Qualified Vendor to the Division's Contract Manager at the following address:

Contract Management Unit
Business Operations – Site Code 791A
Division of Developmental Disabilities
Arizona Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005-6123

or e-mailed to DDDContractsManager@azdes.gov unless a hardcopy signature or original document is required. All notices or other documentation supplied to the Division by the Qualified Vendor shall contain the Qualified Vendor number, Agreement number, and name of the entity.

6.3.5 Advertising and Promotion of Agreement.

6.3.5.1 The Qualified Vendor shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the Division.

6.3.5.2 The Qualified Vendor shall provide to the Division for review and approval all reports or publications (written, visual, and/or audio) which are funded or partially funded under the Agreement a minimum of fifteen (15) calendar days prior to public release.

6.3.5.3 All reports and publications, whether written, visual, and/or audio, shall contain the following statement: "This program was funded through a contract with the Arizona Department of Economic Security (the "Department"). Points of view are those of the author and do not necessarily represent the official position or policies of the Department."

6.3.6 Property of the State.

6.3.6.1 Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of the State. The Qualified

Vendor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Qualified Vendor shall not use or release these materials without the prior written consent of the State.

6.3.6.2 The Federal and State governments reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal or State government purposes such materials, reports, data or information system, software, documentation and manuals.

6.3.6.3 At the termination of the Agreement, in whole or in part, the Qualified Vendor shall make available all such relevant materials, reports, data and information to the Division within thirty (30) days following termination of the Agreement or such longer period as approved by the Division.

6.3.7 Confidentiality.

6.3.7.1 The Qualified Vendor shall observe and abide by all applicable State and Federal statutes, rules and regulations regarding the use or disclosure of information including, but not limited to, information concerning applicants for and recipients of Agreement services. To the extent permitted by law, the Qualified Vendor shall release information to the Department and the Attorney General's Office as required by the terms of this Agreement, by law or upon their request.

6.3.7.2 The Qualified Vendor shall comply with the requirements of the Arizona Address Confidentiality Program, A.R.S. § 41-161 *et seq.* The Department will advise the Qualified Vendor as to applicable policies and procedures the Department has adopted for such compliance.

6.3.8 Agreement Term.

The term of this Agreement shall be the period of time from the Agreement begin date to the Agreement termination date as awarded or extended. The begin date of the Agreement term is the date that the Qualified Vendor may start to provide services under this Agreement. The Qualified Vendor will not be paid or reimbursed for Agreement services provided prior to the begin date. However, payments or reimbursements shall not be made under this Agreement until the effective date of this Agreement. The effective date is the earliest date that this Agreement can take effect. The Agreement begin date shall be the date the Procurement Specialist signs the Application and the Qualified Vendor Agreement Award.

6.3.9 Agreement Extension.

The maximum term for Agreements is six (6) years beginning no sooner than January 1, 2011. The Agreement can be terminated as specified in Section 6.10 *et*

seq. of these terms and conditions. The Procurement Officer may exercise the Division's option to extend or renew the Agreement by unilateral Agreement amendment; a written amendment signed by both parties shall not be necessary. The Division has no obligation to extend or renew this Agreement.

6.3.10 Cooperation.

6.3.10.1 The Department may undertake or award other Agreements or Contracts for additional work related to the work performed by the Qualified Vendor, and the Qualified Vendor must fully cooperate with such other Qualified Vendors, Contractors, and State employees, and carefully fit its own work to such other work. The Qualified Vendor may not commit or permit any act that will interfere with the performance of work by any other Qualified Vendor, Contractor, or by State employees. The Qualified Vendor shall cooperate with the State in the transfer of work, services, case records or files from the Qualified Vendor to any other Qualified Vendor(s), Contractor(s), or State employee(s) that the State deems appropriate for the other Qualified Vendor(s), Contractor(s), or State employee(s) to perform work under their Agreement, Contract, or duties as a State employee.

6.3.11 Technical Assistance.

The Division may, but shall not be obligated to, provide technical assistance to the Qualified Vendor in the administration of Agreement services, or relating to the terms and conditions, policies and procedures governing this Agreement. Notwithstanding the foregoing, the Qualified Vendor shall not be relieved of full responsibility and accountability for the provision of Agreement services in accordance with the terms and conditions set forth herein.

6.3.12 Enrollment; Disenrollment.

Procedures for enrollment of a member in Qualified Vendor services and termination of enrollment with the Qualified Vendor shall be in accordance with the Agreement and all applicable Division and/or AHCCCS rules and policies. AHCCCS rules and policies may be found at www.azahcccs.gov/default.aspx.

6.3.13 Offshore Performance of Work Prohibited.

Due to security and identity protection concerns, direct services under this Agreement shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal member data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications or scope of work, this

definition does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the Agreement. This provision applies to work performed by subcontractors at all tiers.

6.3.14 Scrutinized Businesses.

In accordance with A.R.S. §§ 35-391.06 and 35-393.06, the Qualified Vendor shall certify that the Qualified Vendor does not have scrutinized business operations in Sudan or Iran.

6.4 Costs and Payments

6.4.1 Payments.

6.4.1.1 Upon delivery of goods or services, the Qualified Vendor shall submit a complete and accurate invoice to be paid by the State up to and including thirty (30) days after receipt by the State of an accurate invoice from the Qualified Vendor. Nothing in this Agreement requires the State to pay invoices any sooner than the thirty (30) day requirement of payment delineated in this subsection.

6.4.1.2 The Qualified Vendor is paid a specified amount for each unit of service or deliverable as designated in the service specification and *RateBook* or negotiated rate, not to exceed the maximum number of units indicated by the authorization for each Agreement service/deliverable.

6.4.1.3 The Qualified Vendor shall report Agreement expenditures to the Division in the manner prescribed by the “Records,” “Audits,” and “Reporting Requirements” sections of these terms and conditions. Upon receipt of applicable, accurate and complete reports, the Division shall authorize payment or reimbursement in accordance with the method(s) prescribed by this Agreement.

6.4.1.4 If the Qualified Vendor is in any manner in default in the performance of any obligation under this Agreement, or if audit exceptions are identified, the Division may, at its option and in addition to other available remedies, either offset the amount of payment or withhold payment until satisfactory resolution of the default or exception.

6.4.1.5 Under no circumstances shall the Division make payment to the Qualified Vendor that exceeds the authorization. Under no circumstances shall the Division make payment to the Qualified Vendor for services performed prior to or after the term of the Agreement without timely extension or renewal of the Agreement. Under no circumstances shall the Division make payment to the Qualified Vendor for services delivered prior to licensing if licensing is required. Under no circumstances shall the Division make payment to the Qualified Vendor for services delivered prior to certification. Under no circumstances shall the

Division make payment to the Qualified Vendor for services delivered prior to AHCCCS registration.

- 6.4.1.6 Claims by the Qualified Vendor shall be submitted to the Division on the Division's approved Billing Document. The Qualified Vendor shall be required to make any change in claims format required by the Division, AHCCCS or the Federal government under the electronic submission requirements of the HIPAA of 1996.
- 6.4.1.7 The Division is not obligated to pay for services provided without prior authorization. Claims for services delivered must be initially received by the Division not later than nine (9) months after the last date of service shown on the claim. A resubmitted claim shall not be considered for payment unless it is received by the Division as a clean claim not later than twelve (12) months after the last date of service shown originally on the claim.
- 6.4.1.8 For the purpose of determining the date of receipt of a claim, the date of receipt is the date the Division receives the claim. Only claims received by the Division in accordance with the provisions of this section will be considered for payment.
- 6.4.1.9 The Qualified Vendor must obtain any necessary authorization from the Division or AHCCCSA for services provided to members and shall comply with encounter reporting and claims submission requirements of the Division and AHCCCS.
- 6.4.1.10 Corrections to claims submitted to the Division in which an underpayment was made due to either billing errors or an error on the part of the Division when paying must be made within a twelve (12) month period of time following delivery of service. Underpayment billing corrections will not be considered beyond twelve (12) months from service delivery.

6.4.2 Applicable Taxes.

6.4.2.1 *Payment of Taxes*

The Qualified Vendor shall be responsible for paying all applicable taxes.

6.4.2.2 *State and Local Transaction Privilege Taxes*

The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.

6.4.2.3 *Tax Indemnification*

The Qualified Vendor and all subcontractors shall pay all Federal, State and local taxes applicable to its operation and any persons employed by the Qualified Vendor. The Qualified Vendor shall, and require all subcontractors to, hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or State and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

6.4.2.4 *Arizona Substitute W-9 Form*

In order to receive payment under the Agreement, the Qualified Vendor shall have a current Arizona Substitute W-9 Form on file with the State of Arizona and shall submit a W-9 upon request by the Division. A W-9 will need to be submitted if there are any changes to the Qualified Vendor's address, name, telephone number or other information. A copy of this W-9 form can be found at the Arizona Department of Administration's General Accounting Office website at www.gao.az.gov.

6.4.3 Availability of Funds.

The State shall have no legal liability for any payment that may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The Department may adjust payment authorizations as to services not yet delivered, adjust prior authorizations as to services not yet delivered, or terminate this Agreement, in whole or in part, without further recourse, obligation, or penalty as to services not yet delivered in the event that sufficient funds are not available.

6.4.3.1 Reduction in Appropriations.

If the State Legislature reduces the appropriations to the Department or Division resulting directly or indirectly in a decrease in funding for goods and service that are subject to this Agreement the State may take any of the following actions:

- Post revised rates in the *RateBook*;
- Cancel the Agreement;
- Cancel the Agreement and re-solicit the requirements.

6.4.4 Certification of Cost or Pricing Data.

By signing the Qualified Vendor Application, Agreement, Agreement amendment or other official form, the Qualified Vendor is certifying that, to the best of the Qualified Vendor's knowledge and belief, any cost or pricing data submitted is accurate, complete and current as of the date submitted or other mutually agreed upon date. Furthermore, the price to the State shall be adjusted to exclude any

significant amounts by which the State finds the price was increased because the Qualified Vendor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date of certification. Such adjustment by the State may include overhead, profit or fees. The certifying of cost or pricing data does not apply when Agreement rates are set by law or regulation.

6.4.5 Fees and Program Income.

6.4.5.1 The Qualified Vendor shall impose no fees or charges of any kind upon members for services authorized under this Agreement.

6.4.5.2 The Qualified Vendor shall not submit a claim, demand, or otherwise collect payment from a member for ALTCS services in excess of the amount paid to the Qualified Vendor by the AHCCCSA or the Division. The Qualified Vendor shall not bill or attempt to collect payment directly or through a collection agency from a member claiming to be ALTCS eligible without first receiving verification from the AHCCCSA that the member was ineligible for ALTCS on the date of service or that services provided were not ALTCS covered services (A.A.C. R9-22-702).

6.4.5.3 The Division shall collect Client Share of Cost as described in A.A.C. R6-6-1201 *et seq.* The Qualified Vendor may not collect this amount from members.

6.4.5.4 Members may be assessed a cost sharing requirement in the form of a co-payment for certain medical services (A.A.C. R9-22-711). Residential Qualified Vendors may need to facilitate payment of this charge from client trust fund accounts.

6.4.6 Levels of Service.

6.4.6.1 The Department makes no guarantee to purchase specific quantities of goods or services, or to refer members as may be identified or specified herein. Further, it is understood and agreed that this Agreement is for the sole convenience of the Department and that the Department reserves the right to obtain like goods or services from other sources.

6.4.6.2 Any administration within the Department may obtain services under this Agreement.

6.4.6.3 The Division makes no guarantee to purchase all of the service capacity or to provide any number of referrals.

6.4.6.4 Any change in member residential placement requires approval by the appropriate Division District Administration. The Division reserves the authority to make any and all determinations regarding member need. Except in an emergency need situation, changes in residential placement require sixty (60) day written prior

notification by either the Qualified Vendor or the Division of Developmental Disabilities.

6.4.7 Payment Recoupment.

The Qualified Vendor shall reimburse the Division upon demand or the Division may deduct from future payments the following:

- 6.4.7.1 Any amounts received by the Qualified Vendor from the Division for Agreement services that have been inaccurately reported or are found to be unsubstantiated;
- 6.4.7.2 Any amounts paid by the Qualified Vendor to a subcontractor if the Qualified Vendor entered into the subcontract without advance notice to the Division;
- 6.4.7.3 Any amount or benefit paid directly or indirectly to an individual or organization not in accordance with the “Substantial Interest Disclosure” section of these terms and conditions;
- 6.4.7.4 Any amounts paid by the Division for services that duplicate services covered or reimbursed by other specific grants, contracts, or payments;
- 6.4.7.5 Any amounts paid or reimbursed in excess of the Agreement or service reimbursement ceiling;
- 6.4.7.6 Any amounts paid to the Qualified Vendor that is subsequently determined to be defective pursuant to the “Certification of Cost or Pricing Data” section of these terms and conditions;
- 6.4.7.7 Any payments made for services rendered before the Agreement begin date or after the Agreement termination date (whether in whole or in part); and
- 6.4.7.8 Any amounts received by the Qualified Vendor from the Division that are identified as a financial audit exception.

6.4.8 Reporting Requirements.

- 6.4.8.1 Unless otherwise provided in this Agreement, reporting shall adhere to the following schedule: no later than the thirtieth (30th) day following the end of each month during the Agreement term, the Qualified Vendor shall submit required programmatic and financial reports to the Division in the form set forth in the Agreement or as required by the Division. Failure to submit accurate and complete reports by the thirtieth (30th) day following the end of a month may result, at the option of the Division, in delay of payment. Failure to provide such report within forty-five (45) days following the end of a month may result, at the option of the Division, in a termination of the Agreement.

- 6.4.8.2 No later than the forty-fifth (45th) day following the termination of this Agreement, in whole or in part, the Qualified Vendor shall submit to the Division a final program and fiscal report. Failure to submit the final program and fiscal report within the above time period may result, at the option of the Division, in forfeiture of final payment. Following the end of each Agreement term, the Qualified Vendor shall submit programmatic and financial reports to the Division in the form set forth in the contract no later than the forty-fifth (45th) day following the end of the each Agreement term. The final fiscal report for the Agreement term shall include all adjustment to prior financial reports submitted for the Agreement term.
- 6.4.8.3 All records or other documentation supplied to the Division by the Qualified Vendor shall contain the Qualified Vendor number, Agreement number, name of the entity, and be submitted to the person designated by the Division.
- 6.4.8.4 Earned income reports for employment-related services shall be submitted to the Division by the Qualified Vendor no later than the fifteen (15th) day of each month following the service. This also applies to Qualified Vendors who contract with another division to provide employment-related services to the Division's members.
- 6.4.8.5 The Qualified Vendor shall comply with any other reporting requirements as specified in the Agreement or as required by the Division.
- 6.4.9 Substantial Interest Disclosure.
- 6.4.9.1 The Qualified Vendor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization that has a substantial interest in the Qualified Vendor's organization or with which the Qualified Vendor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless the Qualified Vendor has made a full written disclosure of the proposed payments, including amounts, to the Division.
- 6.4.9.2 Leases or rental contracts or purchase of real property that would be covered by item 6.4.9.1 of this section shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.
- 6.4.9.3 For the purpose of this section, "relative" shall have the same meaning as in A.R.S. § 38-502, including the definition therein as it may be amended.
- 6.4.10 Coordination of Benefits; Third Party Liability Determination.

- 6.4.10.1 When applicable, the Qualified Vendor shall establish and maintain a third party payer identification process. The Qualified Vendor shall report to the Division any updates to the member-specific third party liability information. When applicable, the Qualified Vendor shall seek payment from the third party utilizing the AHCCCS-approved Healthcare Common Procedure Coding System (“HCPCS”) for the service provider’s category of service, up to the amount of liability before submitting a claim to the Division. When submitting a claim to the Division, the Qualified Vendor shall also provide written documentation acceptable to the Division as to the amount of the third party payment received or as to the rejection or nonpayment of the claim by the third party. Acceptable written documentation includes, but is not limited to, an “explanation of benefits” form when the third party is an insurance company whose potential liability on the claim arises out of a contract of insurance. To the extent the Division pays all or a portion of a claim of the Qualified Vendor, the Qualified Vendor hereby assigns to the Division all rights it would otherwise have had from the third party or from any other source.
- 6.4.10.2 AHCCCS rules apply to the coordination of benefits under this Agreement.

6.5 Accountability

6.5.1 Professional Standards.

The Qualified Vendor shall deliver services in a humane and respectful manner and in accordance with any and all applicable professional accreditation standards. Levels of staff qualifications, professionalism, numbers of staff and individuals identified by name must be maintained as presented in the Agreement.

6.5.2 Qualified Vendor Code of Conduct.

- 6.5.2.1 The Qualified Vendor shall subcontract with or utilize only those individuals or organizations that are culturally sensitive, who meet accessibility standards for the disabled, and who do not discriminate based on ethnicity, gender, age, race, religion, marital status, sexual orientation or socioeconomic status. Subcontractors and their credentials shall meet all the requirements that apply to the Qualified Vendor.
- 6.5.2.2 The Qualified Vendor must ensure that its personnel, subcontractors and any other individual utilized by the Qualified Vendor for this Agreement:
- Represent themselves, their credentials, and their relationship to Qualified Vendor accurately to members and others in the community.
 - Participate as appropriate in the planning (e.g., ISP) process, including the implementation of plan objectives.
 - Maintain consumer privacy and confidential information in conformity with federal and state law, rule, and policy.

- Ensure that all individuals who participate in this Agreement have been trained and have affirmed their understanding of federal and state law, rule, and policy regarding confidential information.
- Ensure that members receiving service are safely supervised and accounted for.
- Act in a professional manner, honor commitments, and treat members and families with dignity and respect.
- Display a positive attitude.
- Absolute zero tolerance for the following: sexual activity with members and family members; employ authority or influence with members and families for the benefit of a third party; exploit the member's trust in the Contractor; or accept any commission, rebates, or any other form of remuneration except for payment by the Contractor.

6.5.2.3 The Qualified Vendor shall avoid any action that might create or result in the appearance of having:

6.5.2.3.1 Inappropriate use or divulging of information gathered or discovered pursuant to the performance of its duties under the Agreement;

6.5.2.3.2 Acted on behalf of the State without appropriate authorization;

6.5.2.3.3 Provided favorable or unfavorable treatment to anyone;

6.5.2.3.4 Made a decision on behalf of the State that exceeded its authority, could result in partiality, or have a political consequence for the State;

6.5.2.3.5 Misrepresent or otherwise impeded the efficiency, authority, actions, policies, or adversely affect the confidence of the public or integrity of the State; or,

6.5.2.3.6 Loss of impartiality when advising the State.

6.5.3 Personnel.

The Qualified Vendor's personnel must satisfy all qualifications, carry out all duties, work the hours and receive the compensation set forth in this Agreement.

6.5.4 Fingerprinting.

6.5.4.1 The Qualified Vendor shall comply with, and shall ensure that all of the Qualified Vendor's employees, independent contractors, subcontractors, volunteers and other agents comply with, all applicable (current and future) legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks that relate to Agreement performance.

- 6.5.4.2 Applicable legal requirements relating to fingerprinting, certification, and criminal background checks may include, but are not limited to the following: A.R.S. §§ 36-594.01, 36-3008, 41-1964, and 46-141. All applicable legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks are hereby incorporated in their entirety as provisions of this Agreement. The Qualified Vendor is responsible for knowing which legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks relate to Agreement performance. The reference to “juvenile” in A.R.S. § 46-141 shall include “vulnerable adult” as defined in A.R.S. § 13-3623. For reference, these provisions include, but are not limited to, the following:
- 6.5.4.3 Personnel who are employed by the Qualified Vendor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall submit a full set of fingerprints to the Department for the purposes of obtaining a state and federal criminal records check pursuant to A.R.S. § 41-1750 and Public Law (“P.L.”) 92-544 or shall apply for fingerprint clearance card within seven (7) working days of employment.
- 6.5.4.4 The Qualified Vendor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel. The Department may allow all or part of the costs of fingerprint checks to be included as an allowable cost in the Agreement.
- 6.5.4.5 The Qualified Vendor shall comply with the Division’s Criminal Acts/ Fingerprinting Standards.
- 6.5.4.6 Except as provided in A.R.S. § 46-141, this Agreement may be cancelled or terminated immediately if a person employed by the Qualified Vendor and who has contact with juveniles or vulnerable adults certifies pursuant to the provisions of A.R.S. § 46-141 (as may be amended) that the person is awaiting trial or has been convicted of any of the offenses listed therein in this State, or of acts committed in another state that would be offenses in this State, or if the person does not possess or is denied issuance of a valid fingerprint clearance card.
- 6.5.4.7 Personnel who are employed by any Qualified Vendor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall certify on forms provided by the Department and notarized whether they are awaiting trial on or have ever been convicted of any of the offenses described in A.R.S. § 46-141 (F) (as may be amended).
- 6.5.4.8 Personnel who are employed by any Qualified Vendor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable

adults shall certify on forms provided by the Department and notarized whether they have ever committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse or any act of abuse against a vulnerable adult as defined in A.R.S. § 13-3623.

6.5.5 Federally Recognized Native American Tribes or Military Bases Certifications.

Federally recognized Native American tribes or military bases may submit and the Department shall accept certifications that state that no personnel who are employed or who will be employed during the Agreement term have been convicted of, have admitted committing or are awaiting trial on any offense as described in A.R.S. § 46-141 (F) (as may be amended).

6.5.6 Background Checks for Employment through the Central Registry.

If providing direct services to children or vulnerable adults, the following shall apply:

6.5.6.1 The provisions of A.R.S. § 8-804 (as may be amended) are hereby incorporated in its entirety as provisions of this Agreement.

6.5.6.2 The Department will conduct Central Registry Background Checks and will use the information contained in the Central Registry as a factor to determine qualifications for positions that provide direct service to children or vulnerable adults for:

1. Any person who applies for a contract with this State and that person's employees;
2. All employees of a contractor;
3. A subcontractor of a contractor and the subcontractor's employees; and
4. Prospective employees of the contractor or subcontractor at the request of the prospective employer.

6.5.6.3 Volunteers who provide direct services to children or vulnerable adults shall have a Central Registry Background Check which is to be used as a factor to determine qualifications for volunteer positions.

6.5.6.4

1. A person who is disqualified because of a Central Registry Background Check may apply to the Board of Fingerprinting for a Central Registry exception pursuant to A.R.S. § 41-619.57. A person who is granted a Central Registry exception pursuant to A.R.S. § 41-619.57 is not entitled to a contract, employment, licensure, certification or other benefit because the person has been granted a Central Registry exception.
2. Before being employed or volunteering in a position that provides direct services to children or vulnerable adults, persons shall certify on forms that are

provided by the Department whether an allegation of abuse or neglect was made against them and was substantiated. The completed forms are to be maintained as confidential.

6.5.6.5 A person awaiting receipt of the Central Registry Background Check may provide direct services to ADES clients after completion and submittal of the Direct Service Position certification if:

1. The person is not currently the subject of an investigation of child abuse or neglect in Arizona or another state or jurisdiction; and
2. The person has not been the subject of an investigation of child abuse or neglect in Arizona, or another state or jurisdiction, which resulted in a substantiated finding.

The Certification for Direct Service Position is located at:

<http://www.azdes.gov/InternetFiles/InternetProgrammaticForms/doc/ACY-1287AFORFF.doc>.

6.5.6.6 If the Central Registry Background Check specifies any disqualifying act and the person does not have a Central Registry exception, the person shall be prohibited from providing direct services to ADES clients.

6.5.6.7 The Qualified Vendor shall comply with the provisions of A.R.S. § 8-804 (as may be amended) and submit the names of each employee, subcontractor, and subcontractor employee, including volunteers, providing direct service to Division members for the Central Registry Background Check. An optional form for submitting the request is in Section 9, Attachment G. Qualified Vendors may submit the required information in any format. The Request for Search of Central Registry for Background Check is also located at:
<https://www.azdes.gov/InternetFiles/InternetProgrammaticForms/doc/ACY-1288AFORFF.doc>.

6.5.6.7.1 The Qualified Vendor shall maintain the Central Registry Background Check results and any related forms or documents in a confidential file for five (5) years after termination of the Agreement.

6.5.6.7.2 For purposes of this Agreement, references to “juvenile” in A.R.S. § 8-804 shall also include “vulnerable adult” as defined in A.R.S. § 13-3623.

6.5.7 Evaluation.

The Department or third parties may evaluate, and the Qualified Vendor shall cooperate in the evaluation of, Agreement services. Evaluation may assess the quality and impact of services, either in isolation or in comparison with other

similar services, and assess the Qualified Vendor's progress and/or success in achieving the goals, objectives and deliverables set forth in this Agreement.

6.5.8 Visitation, Inspection and Copying.

The Qualified Vendor's or any subcontractor's facilities, services, members served, books and records pertaining to the Agreement shall be available for visitation, inspection and copying by the Division and any other appropriate agent of the State or Federal Government. At the discretion of the Division, visitation, inspection and copying may be at any time during regular business hours, announced or unannounced. If the Division deems it to be an emergency situation, it may at any time visit and inspect the Qualified Vendor's or any subcontractor's facilities, services, and members served, as well as inspect and copy their Agreement-related books and records.

6.5.9 Supporting Documents and Information.

In addition to any documents, reports or information required by any other section of this Agreement, the Qualified Vendor shall furnish the Division with any further documents and information deemed necessary by the Division in the form requested by the Division to demonstrate that the Qualified Vendor is in compliance with programmatic and Agreement requirements. Upon receipt of a request for information from the Department, the Qualified Vendor shall provide complete and accurate information no later than fifteen (15) days after the receipt of the request.

6.5.10 Monitoring.

6.5.10.1 The Department may monitor the Qualified Vendor or any subcontractor and each shall cooperate in the monitoring of services delivered, facilities and records maintained and fiscal practices.

6.5.10.2 The Division will monitor the Qualified Vendor's compliance with the Agreement as deemed necessary by the Division. Monitoring may also be conducted, at reasonable times, by members, parents, member representatives, representatives of the Developmental Disabilities Advisory Council, and other recognized, on-going advocacy groups for persons with developmental disabilities. The Qualified Vendor shall adhere to all related policies and procedures the Division deems appropriate to adequately evaluate the quality and impact of services and to establish on-going monitoring of service performance. The Division reserves the right to monitor the actual provision of services for compliance with the Division Programmatic Standards and to conduct investigations in accordance with the Division Investigation Standards and to verify staffing levels as authorized by the Division District Administration.

- 6.5.10.3 If the Division requires the Qualified Vendor to implement a corrective action plan, and the approved plan requires it, the Qualified Vendor shall notify all current and prospective members that they are operating under a corrective action plan.
- 6.5.11 Utilization Control/Quality Assurance.
- 6.5.11.1 The Qualified Vendor shall, at all times during the term of this Agreement, maintain an internal quality assurance system in accordance with current applicable AHCCCS rules and policies and Federal rules as specified in the current 42 CFR Part 456, as implemented by AHCCCS and the Division. Qualified Vendor requirements shall include, but are not limited to:
- 6.5.11.1.1 Completing statistical or program reports as requested by the Division;
- 6.5.11.1.2 Complying with any recommendations made by the Division's Statewide Quality Management Committee;
- 6.5.11.1.3 Making records available upon request;
- 6.5.11.1.4 Allowing persons authorized by the Division access to program areas at any hours of the day or night as deemed appropriate by the Division; and
- 6.5.11.1.5 Providing program information, upon request, to the Division.
- 6.5.11.2 The Qualified Vendor shall cooperate with the Division and AHCCCS quality assurance programs and reviews.
- 6.5.12 Sanctions Against the Division as a Result of Qualified Vendor Action or Inaction.
- 6.5.12.1 Sanctions imposed against the Division by AHCCCSA for noncompliance with requirements for encounter data reporting, referenced in "Records" of these Terms and Conditions, that would not have been imposed but for the action or inaction of one or more Qualified Vendors, will be assessed against the Qualified Vendor based on the percentage of the Qualified Vendor's contribution to the sanction imposed against the Division.
- 6.5.12.2 Any other sanctions imposed against the Division by AHCCCSA in accordance with applicable AHCCCS rules, policies, and procedures that would not have been imposed but for the action or inaction of one or more Qualified Vendors will be assessed against the Qualified Vendor based on the percentage of the Qualified Vendor's contribution to the sanction imposed against the Division.

- 6.5.12.3 Sanctions imposed against the Division by AHCCCSA for failure of one or more Qualified Vendors or any subcontractor to submit requested disclosure statements will be assessed against the Qualified Vendor based on the percentage of the Qualified Vendor's contribution to the sanction imposed against the Division.
- 6.5.13 Fair Hearings and Members' Grievances.
- 6.5.13.1 The Qualified Vendor shall advise all members who receive services of their right, at any time and for any reason, to present to the Qualified Vendor and to the Division any grievances arising from the delivery of services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or quality of services. The Division may assert its jurisdiction to hear the grievance or refer the matter to the appropriate authority.
- 6.5.13.2 If required by the Division, the Qualified Vendor shall maintain a system, subject to review upon request by the Division, for reviewing and adjudicating grievances by members or subcontractors concerning the actual provision of services and payment for same by or on behalf of the Qualified Vendor. This system shall follow the grievance procedure agreed to by AHCCCSA and the Division in the current AHCCCS/Division intergovernmental Agreement and the Division rules and policies.
- 6.5.14 Merger or Acquisition.
- 6.5.14.1 The Qualified Vendor shall not change ownership and/or taxpayer identification number without the prior written consent of the Division during the term of this Agreement.
- 6.5.14.2 A proposed merger, reorganization, affiliation, or change in ownership of the Qualified Vendor shall require prior approval of the Division. In some cases, a new Application may be required.
- 6.5.15 Disclosure of Bankruptcy Filing.
- Qualified Vendors shall immediately notify the Division of any and all filings made under the bankruptcy laws and regulations and promptly provide a copy of the court filing and any subsequent non-procedural Court orders to the Division, including the final order disposing of the bankruptcy. In addition, the Qualified Vendor shall immediately submit an amended Assurances and Submittals, to the Division's Contract Management Unit.
- 6.5.16 Federal Database Checks.
- 6.5.16.1 The Division will not and the Qualified Vendor shall not employ or contract with any individual who has been debarred, suspended or otherwise lawfully prohibited

from participating in any public procurement activity or from participating in non-procurement activities under regulations issued under Executive Order 12549 or under guidelines implementing Executive Order 12549 [42 Code of Federal Regulations (“C.F.R.”) § 438.610(a) and (b), 42 C.F.R. § 1001. 1901(b), 42 C.F.R. § 1003. 102(a)(2)]. The Division is obligated under 42 C.F.R. § 455.436 to screen all Qualified Vendors and the Qualified Vendor is obligated to screen all employees, contractors, and/or subcontractor employees to determine whether any of them have been excluded from participation in Federal health care programs by checking the following Federal databases:

1. The List of Excluded Individuals/Entities (“LEIE”) no less frequently than monthly (<http://www.oig.hhs.gov/fraud/exclusions.asp>),
2. The System for Award Management (“SAM”) no less frequently than monthly (<https://www.sam.gov/portal/public/SAM/>),
3. And any other such databases that may be prescribed.

6.5.16.2 The Qualified Vendor shall maintain the Federal Database Check results and any related forms or documents in a confidential file for five (5) years after termination of the Agreement.

6.5.17 Fraud and Abuse.

6.5.17.1 If the Qualified Vendor discovers, or is made aware, that an act of suspected fraud or abuse has occurred or been alleged, the Qualified Vendor shall immediately report the incident or allegation to the Division as well as to the AHCCCS, Office of the Inspector General.

6.5.17.2 The Qualified Vendor shall notify the Division within twenty-four (24) hours of the act, in writing, if the Qualified Vendor (i) fails to so maintain any representation, comply with any covenant, or perform any duty as provided in this Agreement, or (ii) receives notice or becomes aware of a claim or cause of action that would, if valid and enforceable against the Qualified Vendor, violate any provision in this Agreement or have a material effect on the Qualified Vendor’s business. The notice to the Division shall describe the event or facts that triggered the delivery of the notice.

6.6 **Agreement Changes**

The Agreement consists of all solicitation documents including amendments (Solicitation) and the Qualified Vendor’s approved application (“Application”). The Division may change the Agreement by posting an amendment to the Solicitation for thirty (30) days of review and comment. The amendment then requires signature by both parties in order for the Agreement to continue. The

Qualified Vendor may request a change to their Application and upon approval the change will become part of their ongoing Agreement.

6.6.1 Solicitation Amendments.

This Agreement is issued under the authority of the Procurement Officer who signed this Agreement. The Solicitation may be modified only through a Solicitation amendment. The Division shall provide notice to Qualified Vendors not less than thirty (30) days prior to the issuance of an amendment to this Agreement. During the thirty (30) day posting period, Qualified Vendors may submit comments on the proposed amendment to the Division, or, pursuant to Section 6.11.2 herein, may file a Request for Problem Solving with the Division Assistant Director or a Notice of Protest with the Department Procurement Officer. Unless otherwise provided in this Agreement, after a Solicitation amendment has been posted at least thirty (30) days, the Division may issue the amendment to the Agreement, in whole or in part. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized State employee or made unilaterally by the Qualified Vendor are violations of the Agreement and of applicable law. Such changes, including unauthorized written Agreement amendments, shall be void and without effect, and the Qualified Vendor shall not be entitled to any claim under this Agreement based on those changes. If an amendment requires the signature of the Qualified Vendor, and the Qualified Vendor fails to sign and return the amendment in the form and within the timeframe specified by the Division, the Division may terminate the Agreement, in whole or in part.

- 6.6.1.1 The Division Assistant Director may withdraw a Solicitation amendment, in whole or in part, before it has been issued, if it is determined to be in the best interest of the State.

6.6.2 Updating Information and Amending a Qualified Vendor Application.

- 6.6.2.1 The Qualified Vendor shall update in QVADS the general information section of the vendor contract information component, the assurances and submittal form and associated submittals, the program description section of the detail information component, and administrative and service sites as necessary to ensure that the information is current and accurate. These changes are Vendor-initiated Application amendments. Application amendments that require approval by the Division are indicated in the electronic submittal process for QVADS and do not become effective unless approved.
- 6.6.2.2 The Qualified Vendor shall update all other information in QVADS as necessary to ensure that the information is current and accurate.

- 6.6.2.3 If the Division finds that the information provided in the original Application or as an update to the application is materially inaccurate, and the Qualified Vendor fails to correct such information within the time specified in a notice from the Division, such failure may be cause for termination of the Agreement, in whole or in part. The Division may remove the information from the directory until a correction is provided or the Agreement is terminated.
- 6.6.2.4 The addition of a service to a Qualified Vendor Agreement shall require an Agreement amendment.
- 6.6.3 Subcontracts.
- 6.6.3.1 The Qualified Vendor shall not enter into any subcontract for direct services under this Agreement without advance notice to the Division.
- 6.6.3.2 Prior to adding a subcontractor to the Agreement, the Qualified Vendor shall submit a formal, written statement to the Contracts Manager. The statement shall:
- 6.6.3.2.1 Be on the Qualified Vendor's company letterhead;
- 6.6.3.2.2 Be signed by an authorized signatory of the Qualified Vendor; and
- 6.6.3.2.3 Contain the following information:
- a. The subcontractor's name, address, phone number, e-mail address, and primary point of contact;
 - b. The certifications required of the subcontractor (if any);
 - c. The type of services to be provided by the subcontractor;
 - d. The amount of time or effort (as a percent of the total Agreement performance) that the subcontractor will perform in relation to total performance of the Agreement's requirements; and
 - e. A description of the quality assurance measures that the Qualified Vendor shall use to monitor the subcontractor's performance.
- 6.6.3.3 The State reserves the right to request additional information deemed necessary about any proposed subcontractor.
- 6.6.3.4 The subcontract shall incorporate by reference the entirety of this Agreement and the AHCCCS Minimum Subcontract Provisions.

- 6.6.3.5 The Qualified Vendor shall provide copies of each subcontract with a subcontractor relating to the provision of Agreement services to the Division within five (5) business days of the request.
- 6.6.3.6 The Qualified Vendor shall be legally responsible for Agreement performance whether or not subcontractors are used.
- 6.6.3.7 No subcontract may operate to terminate or limit the legal responsibility of the Qualified Vendor to assure that all activities carried out by any subcontractor conform to the provisions of this Agreement.

6.6.4 Assignment and Delegation.

The Qualified Vendor shall not assign any right nor delegate any duty under this Agreement.

6.7 Risk and Liability

6.7.1 General Indemnification.

The parties to this contract agree that the State of Arizona and the Department of Economic Security shall be indemnified and held harmless by Contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona and the Department shall be responsible for their own negligence. Each party to this contract is responsible for its own negligence.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are a public agency, board, commission, or university of the State of Arizona.

6.7.2 Indemnification - Patent and Copyright.

To the extent permitted by A.R.S. §§ 41-621 and 35-154, the Qualified Vendor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Agreement performance or use by the State of materials furnished or work performed under this Agreement. The State will notify the Qualified Vendor of any claim for which it may be liable under this section.

6.7.3 Force Majeure.

- 6.7.3.1 Except for payment of sums due for services rendered in accordance with the terms of the Agreement, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force

majeure” means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authority and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.7.3.2 Force majeure shall not include the following occurrences:

6.7.3.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer’s plant or elsewhere, or an oversold condition of the market;

6.7.3.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.7.3.2.3 Inability of either the Qualified Vendor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.7.3.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following business day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.

6.7.3.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.7.4 Third Party Antitrust Violations.

The Qualified Vendor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Qualified Vendor toward fulfillment of this Agreement.

6.7.5 Predecessor and Successor Agreements.

The execution or termination of this Agreement, in whole or in part shall not be considered a waiver by the Department of any rights it may have for damages suffered through a breach of this Agreement or a prior Agreement with the Qualified Vendor.

6.7.6 Indemnification and Insurance.

6.7.6.1 *Indemnification*

6.7.6.1.1 Qualified Vendor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Qualified Vendor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Qualified Vendor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Qualified Vendor from and against any and all claims. It is agreed that Qualified Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Qualified Vendor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Qualified Vendor for the State of Arizona.

6.7.6.1.2 This indemnity shall not apply if the Qualified Vendor or subcontractor(s) is/are State of Arizona agencies, boards, commissions or universities.

6.7.6.2 *Insurance Requirements*

6.7.6.2.1 Qualified Vendor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Qualified Vendor, his agents, representatives, employees or subcontractors.

6.7.6.2.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Qualified Vendor from liabilities that might arise out of the performance of the work under this Agreement by the Qualified Vendor, its agents, representatives, employees or subcontractors, and Qualified Vendor is free to purchase additional insurance.

6.7.6.2.3 Minimum Scope and Limits of Insurance: Qualified Vendor shall provide coverage with limits of liability not less than those stated below:

6.7.6.2.3.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

a. For Qualified Vendors of Occupational, Physical or Speech Therapy services:

<u>Coverage</u>	<u>Minimum Limits</u>
• General Aggregate	\$2,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

1. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor”*.
2. The policy shall be endorsed to include a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Qualified Vendor.
3. Commercial General Liability may be satisfied if the Commercial General Liability policy is combined with the Professional Liability policy (item 6.7.6.2.3.4 below), provided that the Commercial General Liability coverage is written on an occurrence basis, and certified with the required coverage, limits and endorsements required for Section 6.7.6.2.3.1. If written with the Professional Liability policy, the Commercial General Liability section shall have separate limits from the Professional Liability.

b. For all other Qualified Vendors:

<u>Coverage</u>	<u>Minimum Limits</u>
• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

1. The policy shall be endorsed to include coverage for Sexual Abuse and Molestation with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate.
2. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor”*.
3. The policy shall be endorsed to include a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents and employees for losses arising from work performed by or on behalf of the Qualified Vendor.

6.7.6.2.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

- a. Combined Single Limit (CSL) \$1,000,000
 1. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor, involving automobiles owned, leased, hired or borrowed by the Qualified Vendor”*.
 2. The policy shall be endorsed to include a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents and employees for losses arising from work performed by or on behalf of the Qualified Vendor.
 3. This section, **Business Automobile Liability**, shall not be applicable in the event the Qualified Vendor (or its Subcontractors) does not utilize a vehicle in any manner in the performance of the Agreement or if the

utilization is only for commuting purposes. The term “commuting purposes” means a vehicle is used to travel from the Qualified Vendor’s home to its principal place of business or to one designated location. The Qualified Vendor electing to utilize their vehicle solely for commuting purposes shall submit a request to the Division for a Business Automobile Liability Waiver. In the event the Qualified Vendor (or its Subcontractors) subsequently utilizes the vehicle in the performance of the Agreement or it utilizes it for other than commuting purposes under the Agreement, this paragraph, **Business Automobile Liability**, shall be fully applicable, effective the date the utilization changed.

6.7.6.2.3.3 Worker’s Compensation and Employers’ Liability

- a. Worker’s Compensation Statutory
- b. Employer’s Liability

<u>Coverage</u>	<u>Minimum Limits</u>
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- i. Policy shall be endorsed to include a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Qualified Vendor.
- ii. This requirement shall not apply to the Qualified Vendor or subcontractor exempt from the provisions of A.R.S. § 23-901. To claim this exemption, the Qualified Vendor or subcontractor shall submit a request to the Division for the appropriate waiver (Sole Proprietor Waiver or Independent Contractor Agreement) form.

6.7.6.2.3.4 Professional Liability (Errors and Omissions Liability)

<u>Basis</u>	<u>Minimum Limits</u>
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, the Qualified Vendor warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

- b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Agreement.

6.7.6.2.4 For assistance, a Qualified Vendor may contact the Department of Insurance Market Assist hotline at 602-364-3100. The Qualified Vendor may obtain assistance with sources for Business Automobile Liability to comply with this Agreement and should specify the limit required as well as the Qualified Vendor's status with the Division.

6.7.6.2.5 Additional Insurance Requirements:

6.7.6.2.5.1 The policies shall include, or be endorsed to include, the following provisions: *The State of Arizona and the Department of Economic Security wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Qualified Vendor, even if those limits of liability are in excess of those required by this Agreement.*

6.7.6.2.5.2 The Qualified Vendor's insurance coverage shall be primary insurance with respect to all other available sources.

6.7.6.2.5.3 Coverage provided by the Qualified Vendor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

6.7.6.2.6 Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to Contract Management Unit, Business Operations, Site Code 791A, Division of Developmental Disabilities, Arizona Department of Economic Security, P.O. Box 6123, Phoenix, AZ, 85005-6123, and shall be sent by certified mail, return receipt requested.

6.7.6.2.7 Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A-VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Qualified Vendor from potential insurer insolvency.

If the social services program utilizes the Social Service Contractors Indemnity Pool ("SSCIP") or other approved insurance pool for insurance coverage, SSCIP or the other approved insurance pool is exempt from the A.M. Best's rating requirements listed in this Agreement. If the Qualified Vendor or subcontractor chooses to use SSCIP or another approved insurance pool as its insurance provider, the contract/subcontract would be considered in full compliance with insurance requirements relating to the A.M. Best rating requirements.

6.7.6.2.8 Verification of Coverage:

6.7.6.2.8.1 The Qualified Vendor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

6.7.6.2.8.2 All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of the Agreement.

6.7.6.2.8.3 All certificates required by this Agreement shall be sent directly to:

Contract Management Unit
Business Operations – Site Code 791A
Division of Developmental Disabilities
Arizona Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85007

The State of Arizona Project/Agreement number (the Qualified Vendor Application and Agreement Award Number) and Project Description (“RFQVA DDD 710000”) shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA’S RISK MANAGEMENT SECTION OR TO THE DES OFFICE OF PROCUREMENT.**

6.7.6.2.9 Subcontractors: Qualified Vendors’ certificate(s) shall submit a listing of all subcontractors and include all subcontractors as insured under its policies **or** Qualified Vendors shall furnish/submit to the State of Arizona separate certificates and endorsements for each subcontractor associated with the Agreement award. All insurance coverage for subcontractors shall be subject to the minimum requirements identified above.

6.7.6.2.9.1 Qualified Vendors that utilize subcontractors to provide Developmental Home services will be exempt from providing separate certificates and endorsements if the Qualified Vendor enters into a separate Agreement between the Qualified Vendor, the Developmental Home subcontractor and the Division. Such Agreement shall provide for the Developmental Home subcontractor to be

covered under the Provider Indemnity Program (“PIP”). A sample format for the Agreement may be found on the Division’s website at <https://www.azdes.gov/ddd/>.

6.7.6.2.10 Approval: Any modification or variation from the *insurance requirements* in this Agreement shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Section. Such action will not require a formal Agreement amendment, but may be made by administrative action.

6.7.6.2.11 Exceptions: In the event the Qualified Vendor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the Qualified Vendor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

In the event that the Qualified Vendor determines that it may not be able to comply fully with the insurance requirements set forth above in Section 6.7.6 above, the Qualified Vendor may request that the insurance requirements be modified pursuant to Section 6.7.6.2.10 provided that such request be delivered in writing to the Department as early as possible but in no event not less than ten (10) days prior to Agreement execution. The Qualified Vendor shall include with such request Qualified Vendor’s justification for the modification with supporting documentation.

As provided in Section 6.7.6.2.10, the Department of Administration, Risk Management Section, shall decide whether such modification may be permitted. If the Department of Administration, Risk Management, decides to grant permission, the Department of Economic Security’s Chief Procurement Officer shall then decide whether to approve the modification.

Modifications that are approved are done so on a case-by-case basis and shall not affect the insurance requirements for other Qualified Vendors for whom the modifications have not been approved. If a Qualified Vendor’s request has not been approved or the Qualified Vendor fails to deliver its request prior the applicable deadline, then the Qualified Vendor shall be required to comply fully with the insurance requirements set forth in Section 6.7.6 above.

6.8 Warranties

6.8.1 Year 2000.

6.8.1.1 Notwithstanding any other warranty or disclaimer of warranty in this Agreement, the Qualified Vendor warrants that all products delivered and all services rendered under this Agreement shall comply in all respects to performance and delivery

requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Agreement. In addition, the defense of *force majeure* shall not apply to the Qualified Vendor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

6.8.1.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Agreement, the Qualified Vendor warrants that each hardware, software, and firmware product delivered under this Agreement shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Agreement properly exchanges date-time data with it. If this Agreement requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Agreement. In addition, the defense of *force majeure* shall not apply to the failure of the Qualified Vendor to perform any specification requirements as a result of any date-related data Year 2000 issues.

6.8.1.3 The Qualified Vendor warrants that all services provided under this Agreement shall conform to the requirements stated herein and any amendments hereto. The Department's acceptance of services provided by the Qualified Vendor shall not relieve the Qualified Vendor from its obligations under this warranty. In addition to its other remedies, the Department Procurement Officer may, at the Qualified Vendor's expense, require prompt correction of any services failing to meet the Qualified Vendor's warranty herein. Services corrected by the Qualified Vendor shall be subject to all of the provisions of this Agreement in the manner and to the same extent as the services originally furnished.

6.8.2 Compliance with Applicable Laws.

6.8.2.1 The materials and services supplied under this Agreement shall comply with all applicable Federal, State and local laws, and the Qualified Vendor shall maintain all applicable licenses and permit requirements.

6.8.2.2 In accordance with A.R.S. § 36-557 (Purchase of community developmental disabilities services; application; Agreements; limitation), as applicable, all members who receive Agreement services shall have all of the same specified rights as they would have if enrolled in a service program operated directly by the State.

- 6.8.2.3 The Qualified Vendor shall comply with the requirements related to reporting to a peace officer or child protective services incidents of crimes against children as specified in A.R.S. §13-3620 (as may be amended).
- 6.8.2.4 The Qualified Vendor shall comply with the requirements in A.R.S. § 46-454 related to reporting to a peace officer or to a protective services worker any reasonable basis to believe that abuse, neglect, or exploitation of a vulnerable adult has occurred.
- 6.8.2.5 The Qualified Vendor shall comply with P.L. 101-121, Section 319 (21 U.S.C. Section 1352) (as may be amended) and 29 C.F.R. Part 93 (as may be amended) which prohibit the use of Federal funds for lobbying and which state, in part: Except with the express authorization of Congress, the Qualified Vendor, its employees or agents, shall not utilize any Federal funds under the terms of this Agreement to solicit or influence, or to attempt to solicit or influence, directly or indirectly, any member of Congress regarding pending or prospective legislation. Indian tribes, tribal organizations and any other Indian organizations are exempt from these lobbying restrictions with respect to expenditures that are specifically permitted by other Federal law.
- 6.8.2.6 The Qualified Vendor shall cooperate with all Division investigations, including investigations pursuant to A.R.S. § 36-557(G)(3) that involve danger to the health and safety of a Division consumer. This includes notification to the Division of all complaints involving a consumer.
- 6.8.2.7 The Qualified Vendor and any subcontractor shall comply with all applicable Federal laws, rules, regulations and policies, including Title XIX of the Social Security Act, the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35), Title 42 of the Code of Federal Regulations, and Title 45 Code of Federal Regulations, Parts 74 and 96. If the Qualified Vendor receives Title XX funds, the Qualified Vendor shall comply with The Arizona Title XX Social Services Plan and Section 2352, Title XX Block Grants, of the Omnibus Budget Reconciliation Act of 1981.
- 6.8.2.8 The Qualified Vendor and any subcontractor shall comply with all applicable licensure, certification, and registration standards established by the Department, the Division, and AHCCCS. The Qualified Vendor and any subcontractor shall comply with all applicable Arizona law and applicable Department, Division, or AHCCCS administrative rules, policies, procedures, service standards and guidelines of their profession/occupation, including, but not limited to:
- 6.8.2.8.1 Hiring of ex-offenders;
- 6.8.2.8.2 Fingerprinting of Qualified Vendor's and any subcontractor's staff;

- 6.8.2.8.3 Completing of Fire Risk Profile requirements;
- 6.8.2.8.4 Reporting of unusual incidents involving children and/or adults;
- 6.8.2.8.5 Implementing program audit implementation plans;
- 6.8.2.8.6 Participating as a member of the planning (e.g., ISP) team;
- 6.8.2.8.7 Complying with all policies, procedures and instructions regarding planning documents (e.g., ISPs);
- 6.8.2.8.8 Submitting to the Division's Support Coordinators copies of the planning document (e.g., ISP) strategies and other required documentation;
- 6.8.2.8.9 Providing copies of member records, including evaluations and progress reports; and
- 6.8.2.8.10 Ensuring that all movement of Division members, except in emergency need situations, is coordinated through the planning (e.g., ISP) team. If a member is receiving Title XIX funded services, no member movement shall take place unless it is part of the member's planning document (e.g., ISP).
- 6.8.2.9 The Qualified Vendor and any subcontractor shall comply with the Occupational Safety and Health Administration ("OSHA") regulations regarding blood borne pathogens, 29 CFR 1910.1030.
- 6.8.2.10 The terms of this Agreement shall be subject to the terms of the intergovernmental Agreement between the Division and AHCCCS for the provision of services under ALTCS.
- 6.8.2.11 The Qualified Vendor shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (P. L. 104-191) and all applicable implementing Federal regulations. The Qualified Vendor shall notify the Division no later than one-hundred twenty (120) days prior to any required compliance date if the Qualified Vendor is unwilling to or anticipates that it will be unable to comply with any of the requirements of this section. Receipt by the Division of a notice of anticipated inability or unwillingness to comply as required by this section constitutes grounds for the termination of this Agreement.
- 6.8.2.12 Any changes to Federal laws, regulations, or policies, to Arizona law, to Department, Division, or AHCCCS administrative rules, policies, or procedures, or to the intergovernmental Agreement between the Division and AHCCCS during the term of this Agreement shall apply to the Agreement.

- 6.8.2.13 By entering into this Agreement, the Qualified Vendor warrants compliance with the federal Immigration and Nationality Act (“INA”) and all other state and federal immigration laws and regulations related to the immigration status of its employees. The Qualified Vendor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Division upon request. These warranties shall remain in effect through the term of the Agreement. The Qualified Vendor and its subcontractors shall also maintain Employment Eligibility Verification forms (“I-9”) as required by the U.S. Department of Labor’s Immigration and Control Act, for all employees performing work under the Agreement. I-9 forms are available for download at www.ucis.gov. The Division may request verification of compliance for any Qualified Vendor or subcontractor performing work under the Agreement. Should the Division suspect or find that the Qualified Vendor or any of its subcontractors are not in compliance, the Division may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Agreement for default, and suspension and/or debarment of the Qualified Vendor. All costs necessary to verify compliance are the responsibility of the Qualified Vendor.
- 6.8.2.14 By entering into this Agreement, the Qualified Vendor warrants compliance with the Deficit Reduction Act of 2005 (P.L. 109-171). Any Qualified Vendor that receives at least \$5,000,000 (five million dollars) in Medicaid payments annually shall establish written policies for all employees (including management), and for all employees of any Qualified Vendor or agent of the Qualified Vendor, providing detailed information about false claims, false statements, and whistleblower protections under applicable Federal and State fraud and abuse laws. These written policies must include a specific discussion of the foregoing laws and detailed information regarding the Qualified Vendor’s policies and procedures for detecting and preventing fraud, waste and abuse, as well as the rights of employees to be protected as whistleblowers. In addition, the Qualified Vendor must establish a process for training, and train, existing staff and new hires on false claims, false statements, and whistleblower protections under applicable Federal and State fraud and abuse laws and the Qualified Vendor’s policies and procedures for detecting and preventing fraud, waste and abuse, and the rights of employees to be protected as whistleblowers. All training must be conducted in such a manner that can be verified by the Division.
- 6.8.2.15 The Qualified Vendor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, subsection A. (That subsection reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.”) A breach of a warrant regarding compliance with immigration laws and regulations shall be deemed a material breach of the Agreement and the Qualified Vendor may be subject to penalties up to and including termination of the Agreement. Failure to comply with a State

audit process to randomly verify the employment records of Qualified Vendors and subcontractors shall be deemed a material breach of the contract and the Qualified Vendor may be subject to penalties up to and including termination of the Agreement. The Department retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that the Qualified Vendor or subcontractor is complying with the warranty under this paragraph.

- 6.8.2.16 The Qualified Vendor shall comply with all applicable state and federal statutes and regulations. This shall include A.R.S. § 23-722.01 (as may be amended) relating to new hire reporting, A.R.S. § 23-722.02 (as may be amended) relating to wage assignment orders to provide child support, and A.R.S. § 25-535 (as may be amended) relating to administrative or court-ordered health insurance coverage for children.

- 6.8.3 Advance Directives.

As appropriate, the Qualified Vendor shall comply with Federal and State law on advance directives for adult members. Requirements include:

- 6.8.3.1 Maintaining written policies for adult individuals receiving care through the Qualified Vendor regarding the member's right to make decisions about medical care, including the right to accept or refuse medical care and the right to execute an advance directive. If the Qualified Vendor has a conscientious objection to carrying out an advance directive, it must be explained in policies. [A Qualified Vendor is not prohibited from making objection when made pursuant to A.R.S. § 36-3205(C)(1).]
- 6.8.3.2 Providing written information to adult members regarding a member's right under State law to make decisions regarding medical care and the Qualified Vendor's written policies concerning advance directives (including any conscientious objections).
- 6.8.3.3 Documenting in the member's medical record as to whether the adult member has been provided the information and whether an advance directive has been created.
- 6.8.3.4 Not discriminating against a member because of his or her decision to execute or not execute an advance directive, and not making it a condition for the provision of care.
- 6.8.3.5 Provide education for staff on issues concerning advance directives including notification of direct care providers of services of any advanced directives executed by members to whom they are assigned to provide care.

- 6.8.4 Advising or Advocating on Behalf of a Member.

The Qualified Vendor shall comply with the requirements under 42 C.F.R. § 438.102 and the intergovernmental agreement between the Division and AHCCCSA. The Division may not prohibit, or otherwise restrict, a provider acting within the lawful scope of practice, from advising or advocating on behalf of a member who is authorized to receive services from the provider for the following:

- The member's health status, medical care, or treatment options including any alternative treatment that may be self-administered.
- Any information the member needs in order to decide among all relevant treatment options.
- The risks, benefits, and consequences of treatment or no treatment.
- The member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.

6.8.5 Group Homes for Juveniles.

If the Qualified Vendor provides contracted services in a group home as defined in A.R.S. § 36-1201, the following shall apply:

6.8.5.1 The Qualified Vendor shall agree to the following:

6.8.5.1.1 The group home shall provide a safe, clean and humane environment for the residents.

6.8.5.1.2 The group home is responsible for the supervision of the residents while in the group home environment or while residents are engaged in any off-site activities organized or sponsored by and under the direct supervision and control of the group home or affiliated with the group home.

6.8.5.2 All group homes shall be licensed by either the Department of Health Services or the Department of Economic Security. Failure to obtain and maintain appropriate licensure is a violation of the Agreement.

6.8.5.3 The award of an Agreement is not a guarantee that children will be placed at the group home.

6.8.5.4 In addition to any other remedies available to the Division, the following Agreement remedies shall apply:

6.8.5.4.1 The Division may remove residents from the group home or may suspend new placements to the group home until the contracting violation is corrected.

6.8.5.4.2 The Department may cancel the Agreement.

- 6.8.5.5 If any complaint concerns an immediate threat to the health and safety of a child, the Division will immediately refer the complaint to the licensing authority and notify the Qualified Vendor. The Qualified shall fully cooperate in any investigation by the licensing authority.
- 6.8.5.6 If the Division determines that a violation has occurred, it shall:
- 6.8.5.6.1 Notify all other contracting authorities of the violation; and
- 6.8.5.6.2 Require the Qualified Vendor to develop, in coordination with the Department, a corrective action plan consistent with the severity of the violation; and
- 6.8.5.6.3 Require the Qualified Vendor to implement an approved corrective action plan within the time specified in the corrective action plan.
- 6.8.5.7 If a licensing deficiency is not corrected in a timely manner to the satisfaction of the licensing authority, the Department may cancel the Agreement immediately on notice to the Qualified Vendor and may remove the residents.
- 6.8.6 Limited English Proficiency.
- The Qualified Vendor shall ensure that all services provided are culturally relevant and linguistically appropriate to the population to be served following Department Policy, Limited English Proficiency, DES 1-01-34.
- 6.8.7 Service Process for Wards of the State.
- In the event that an individual calls or appears at a physical location of the Qualified Vendor seeking to render service of process (summons and complaint, petition or subpoena, etc.) upon a minor who is in the physical custody of the Qualified Vendor but is a ward of the State of Arizona, Department of Economic Security, Qualified Vendor agrees not to accept service of that/those document(s) and to refer the individual to the child's Support Coordinator. If, by error, Qualified Vendor or its agent accepts any service of process, a copy shall immediately be forwarded to the child's Support Coordinator and shall also contain a transmittal memorandum that indicates the date the legal document was received, the person receiving it and the place of service, as well as the child to whom it refers.
- 6.8.8 Suspension or Debarment.
- 6.8.8.1 The State may, by written notice to the Qualified Vendor, immediately terminate this Agreement if the State determines that the Qualified Vendor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a

subcontractor of any public procurement unit or other governmental body. This prohibition extends to any entity which employs, consults, subcontracts with or otherwise reimburses for services any person substantially involved in the management of another entity which is debarred, suspended or otherwise excluded from Federal procurement activity. Submittal of an offer or execution of an Agreement shall attest that the Qualified Vendor is not currently suspended or debarred. If the Qualified Vendor becomes suspended or debarred, the Qualified Vendor shall immediately notify the State.

- 6.8.8.2 The Qualified Vendor shall not be debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity.
- 6.8.8.3 The Qualified Vendor shall not employ, consult, subcontract or otherwise reimburse for services any person or entity that is debarred, suspended or otherwise excluded from public procurement activity. This prohibition extends to any person or entity that employs, consults, subcontracts with or otherwise reimburses for services any person or entity substantially involved in the management of another entity that is debarred, suspended or otherwise excluded from public procurement activity.
- 6.8.8.4 The Qualified Vendor shall not retain as a director, officer, partner or owner of five (5) percent or more of the Qualified Vendor, any person, or affiliate of such a person, who is debarred, suspended or otherwise excluded from public procurement activity.
- 6.8.9 Survival of Rights and Obligations after Agreement Expiration or Termination.
- All representations and warranties made by the Qualified Vendor under this Agreement shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510 (as may be amended) except as provided in A.R.S. § 12-529 (as may be amended), the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5 (as may be amended).
- 6.8.10 Certification of Compliance – Anti-Kickback.
- By signing this Agreement, the Qualified Vendor certifies that it has not engaged in any violation of the Medicare Anti-Kickback statute (42 U.S.C. §§ 1320a-7b) or the “Stark I” and “Stark II” laws governing related-entity referrals (P.L. 101-239 and P.L. 101-432) and compensation there from.
- 6.8.11 Warranty of Services.

The Qualified Vendor, by execution of this Agreement, warrants that it has the ability, authority, skill, expertise, and capacity to perform the services specified in the Agreement.

6.8.12 Certification of Truthfulness of Representation.

By signing this Agreement, the Qualified Vendor certifies the following:

6.8.12.1 That all representations set forth herein are true to the best of its knowledge; and

6.8.12.2 That it will maintain all representations, comply with all covenants, and perform all duties throughout the term of the Agreement.

6.9 State's Contractual Remedies

6.9.1 Right to Assurance.

The Procurement Officer may, at any time, demand in writing that the Qualified Vendor give a written assurance of intent to perform. Failure by the Qualified Vendor to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the Agreement under these Terms and Conditions or other rights and remedies available by law or provided by the Agreement. If the Qualified Vendor, at any time believes that it may potentially no longer be able to perform under this Agreement in the immediate future or at any time up to six (6) months into the future, the Qualified Vendor shall provide written notice to the Division informing the Division of the Qualified Vendor's potential inability to perform under this Agreement along with a detailed explanation as to why the Qualified Vendor believes it may not be able to complete performance.

6.9.2 Stop Work Order.

6.9.2.1 The State may, at any time, by written order to the Qualified Vendor, require the Qualified Vendor to stop all or any part of the work called for by this Agreement for a period(s) of days indicated by the State after the order is delivered to the Qualified Vendor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Qualified Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

6.9.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Qualified Vendor shall resume work. The Procurement Officer shall make an equitable adjustment in the authorization

schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

6.9.3 Non-Exclusive Remedies.

The rights and the remedies of the State set out in this Agreement are not exclusive.

6.9.4 Nonconforming Tender.

Reports or other documents supplied under this Agreement shall fully comply with the Agreement and all applicable law. The delivery of reports or other documents or a portion of the reports or other documents in an installment that do not fully comply with the Agreement and all applicable law constitutes a breach of Agreement. On delivery of nonconforming reports or other documents, the State may terminate the Agreement for default as defined in Section 6.10.6, Termination for Default, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

6.9.5 Right of Offset.

The State shall be entitled to offset against any sums due the Qualified Vendor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Qualified Vendor's non-conforming performance or failure to perform the Agreement, including expenses, costs and damages described in the Agreement Terms and Conditions.

6.9.6 Provisions for Default.

In addition to any other remedies available to the Division, if the Qualified Vendor fails to comply with any term of the Agreement, the Division may take one (1) or more of the following actions:

6.9.6.1 Withhold payment, in whole or in part;

6.9.6.2 Suspend enrollment; or

6.9.6.3 Suspend the Agreement, in whole or in part, remove the Qualified Vendor from the Qualified Vendor List, and enroll members with another Qualified Vendor.

6.10 Agreement Termination

6.10.1 Cancellation for Conflict of Interest.

Pursuant to A.R.S. § 38-511, the State may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when the Qualified Vendor receives written notice of the cancellation unless the notice specifies a later time. If the Qualified Vendor is a political subdivision of the State, it may also cancel this Agreement as provided in A.R.S. § 38-511.

6.10.2 Gratuities.

The State may, by written notice, terminate this Agreement, in whole or in part, if the State determines that employment or a gratuity was offered or made by the Qualified Vendor or a representative of the Qualified Vendor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Qualified Vendor.

6.10.3 Termination for Convenience.

The State reserves the right, with written notice, to terminate the Agreement, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Qualified Vendor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Qualified Vendor under the Agreement shall become the property of and be delivered to the State. The Qualified Vendor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

6.10.4 Termination upon Request of the Qualified Vendor.

The State shall terminate the Agreement, in whole or in part, upon request of the Qualified Vendor. The Qualified Vendor shall not terminate the operations of the Qualified Vendor Agency without the prior written consent of the Division during the term of this Agreement. The Qualified Vendor shall provide at least sixty (60) days written notice to the Division setting forth the reasons for requesting termination. The Division shall provide written notice of acceptance of such

termination and the termination date. Upon termination, all goods, materials, documents, data and reports prepared by the Qualified Vendor under the Agreement shall become the property of and be delivered to the State on demand. The State may, upon termination, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Agreement. The Qualified Vendor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Qualified Vendor.

6.10.5 Termination for Default.

6.10.5.1 In addition to the rights reserved in the Agreement, the State may terminate the Agreement, in whole or in part, due to the failure of the Qualified Vendor to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Qualified Vendor. The Department may immediately terminate this Agreement if the Department determines that the health or welfare or safety of service recipients is endangered.

6.10.5.2 The State reserves the right to terminate the Agreement, in whole or in part, when a Qualified Vendor no longer meets the criteria defined in the RFQVA; for non-compliance with the Agreement requirements; or for failure to maintain a valid license, AHCCCS registration or Division certification, as appropriate. The Division shall provide written notice of the termination and the reasons for it to the Qualified Vendor.

6.10.5.3 Upon termination under this section, all goods, materials, documents, data and reports prepared by the Qualified Vendor under the Agreement shall become the property of and be delivered to the State on demand.

6.10.5.4 The State may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Agreement. The Qualified Vendor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Qualified Vendor unless the Agreement is terminated solely for the convenience of the State.

6.10.5.5 This Agreement may immediately be terminated if the Department determines that the health or welfare or safety of members is endangered.

6.10.6 Continuation of Performance through Termination.

The Qualified Vendor shall continue to perform, in accordance with the requirements of the Agreement, up to or beyond the date of termination, in whole or in part, as directed in the termination notice.

6.10.7 Termination for Any Reason.

- 6.10.7.1 In the event of termination or suspension of the Agreement by the Department, in whole or in part, such termination or suspension shall not affect the obligation of the Qualified Vendor to indemnify the Department and the State for any claim by any other party against the Department and/or the State arising from the Qualified Vendor's performance of this Agreement and for which the Qualified Vendor would otherwise be liable under this Agreement. To the extent such indemnification is excluded by A.R.S. § 41-621 *et seq.* or an obligation is unauthorized under A.R.S. § 35-154 (as may be amended), the provisions of this paragraph shall not apply.
- 6.10.7.2 In the event of early termination, any funds advanced to the Qualified Vendor shall be returned to the Department within ten (10) days after the date of termination or upon receipt of notice of termination of the Agreement, whichever is earlier.
- 6.10.7.3 In the event the Agreement is terminated, in whole or in part, with or without cause, or expires, the Qualified Vendor shall assist the Division in the transition of members to other Qualified Vendors in accordance with applicable rules and policies. Such assistance and coordination shall include but shall not be limited to:
- 6.10.7.3.1 Forwarding program and other records as may be necessary to assure the smoothest possible transition and continuity of services. The cost of reproducing and forwarding such records shall be borne by the Qualified Vendor.
- 6.10.7.3.2 Notifying of subcontractors and members.
- 6.10.7.3.3 Facilitating and scheduling medically necessary appointments for care and services.
- 6.10.7.3.4 Providing all reports set forth in this Agreement.
- 6.10.7.3.5 Making provisions for continuing all management/administrative services until the transition of members is completed and all other requirements of this Agreement are satisfied.
- 6.10.7.3.6 If required by the Division, extending performance until suitable arrangements are made by the Division for a replacement Qualified Vendor.

- 6.10.7.3.7 If required by the Division, at the Qualified Vendor's own expense, assisting in the training of personnel.
- 6.10.7.3.8 Paying all outstanding obligations for care rendered to members.
- 6.10.7.3.9 Providing the following financial reports to the Division until the Division is satisfied that the Qualified Vendor has paid all such obligations: (a) a monthly claims aging report by provider/creditor including Incurred But Not Reported (IBNR) amounts; (b) a monthly summary of cash disbursements; and (c) copies of all bank statements received by the Qualified Vendor in the preceding month for Qualified Vendor's bank accounts. All reports in this section shall be due on the fifteenth (15th) day of each succeeding month for the prior month.
- 6.10.7.4 In the event the Agreement is terminated in part, the Qualified Vendor shall continue the performance of the Agreement to the extent not terminated.

6.10.8 Voidability of Agreement.

This Agreement is voidable and may be immediately terminated by the Department upon the Qualified Vendor becoming insolvent or filing proceedings in bankruptcy or reorganization, or upon assignment or delegation of the Agreement without prior written approval from the Department.

6.11 Agreement Claims and Controversies

- 6.11.1 Protests of the posting of a Request for Qualified Vendor Application, the denial of a Qualified Vendor Application in its entirety, or the denial of one or more services included in the Qualified Vendor Application shall be resolved according to A.A.C. R-6-6-2115. The remedies in this rule apply to protests of the posting of a RFQVA, the denial of a Qualified Vendor Application in its entirety, or denial of one or more services included in the Qualified Vendor Application. Resolution of Agreement Claims and Controversies shall be resolved according to A.A.C. R6-6-2116.
- 6.11.2 If a Protest of any specific numbered provision of an amendment is upheld pursuant to A.A.C. R6-6-2115 or A.A.C. R6-6-2116, then that specific numbered provision shall be subject to the remedy associated with the Protest decision, but no other provision of the amendment shall be affected.

6.12 Contingency Planning

The Qualified Vendor shall have a contingency plan that addresses the requirements of (1) a Business Continuity Plan, and (2) a Pandemic Performance Plan, as stipulated in Section 6.12.1 and 6.12.2. The Contingency Plan is subject to the approval of the Division. The Qualified Vendor shall submit any

amendment to the plan to the Division within ten (10) business days. The State may require a copy of the plan at any time prior to or post award of an Agreement.

6.12.1 Business Continuity.

6.12.1.1 Each Qualified Vendor shall establish a written Business Continuity Plan (“BCP”) that illustrates how the Qualified Vendor shall provide contracted service(s) pursuant to the Agreement in the event of a natural or man-made disaster (e.g., earthquake, flood, catastrophic accident, fire, explosion, gas leak) or any other emergency event which may disrupt routine service delivery (e.g., power outage, disruption of essential utilities, evacuation by authorities). The BCP shall, at a minimum, include the following:

- a. Internal emergency notification call-trees, organizational chart, and orders of succession.
- b. Checklists to contact and coordinate with police, fire, medical, and other community emergency responders.
- c. The Qualified Vendor’s emergency points of contact(s) information, communication and reporting protocols with the Division.
- d. Plans to respond, restore, and resume business operations as soon as practical and also protecting the life, health, and safety of members and the Qualified Vendor’s staff.

6.12.1.2 In addition, the Qualified Vendor shall have contingencies for:

- a. The loss of facilities/sites.
- b. Electronic/telephone failure at primary place of business.
- c. Loss of computer systems/records.
- d. A facility evacuation plan that assures the successful evacuation of members and staff.
- e. A self-sheltering (i.e., shelter in place) plan which maintains adequate staffing levels, food, water, prescribed medications and equipment that meet the needs of members for not less than three (3) days and for the duration of the emergency/disaster event.

6.12.1.3 The BCP shall be specific for each of its Arizona facilities and reference community emergency resources as described in Section 6.12.1.1.

6.12.1.4 The Qualified Vendor shall provide annual BCP training for all staff members.

6.12.1.5 The Qualified Vendor shall conduct BCP exercises, annually.

6.12.1.6 The Qualified Vendor shall review its BCP(s) as needed, amend the plan as required, and train all staff members on any changes to the plan.

6.12.1.7 In the event of a local disaster declaration, an emergency declared by the Governor of Arizona, the President of the United States, or the World Health

Organization which makes the performance of any term of this Agreement impossible or impracticable, the Division shall have the authority to:

- a. Temporarily void the Agreement(s), in whole or in part, if the Qualified Vendor cannot perform to the standards agreed upon in the initial terms.
- b. Implement emergency procurements as authorized by the Director of the Arizona Department of Administration pursuant to A.R.S. § 41-2537 of the Arizona Procurement Code.
- c. Reinstate the voided Agreement(s) if the Qualified Vendor can demonstrate ability to resume performance of the Agreement(s).

6.12.1.8 As a result of the provisions contained in Section 6.12.1.7 and subsections (a), (b), or (c) the Division shall not incur any liability with a Qualified Vendor during a disaster or emergency event.

6.12.2 Pandemic Contractual Performance.

6.12.2.1 The State shall require a written Pandemic Performance Plan that illustrates how the Qualified Vendor shall perform up to the Agreement standards in the event of a pandemic (e.g., influenza). At a minimum, the Pandemic Performance Plan shall include:

- a. Key succession and performance planning if there is a sudden significant decrease in Qualified Vendor's workforce.
- b. Alternative methods to ensure there are services or products in the supply chain.
- c. An up to date list of company contacts and organizational chart.

6.12.2.2 The Qualified Vendor shall provide annual training on the Pandemic Performance Plan for all staff members.

6.12.2.3 The Qualified Vendor shall review its Pandemic Performance Plan as needed, amend the plan as required, and train all staff members on any changes to the plan.

6.12.2.4 In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this Agreement impossible or impracticable, the State shall have the following rights:

- a. After the official declaration of a pandemic, the State may temporally void the Agreement(s) in whole or specific sections if the Qualifies Vendor cannot perform to the standards agreed upon.
- b. The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director of the Arizona Department of Administration per A.R.S. § 41-2537 of the Arizona Procurement Code.

- c. Once the pandemic is officially declared over and/or the Qualified Vendor can demonstrate the ability to perform, the State, at its sole discretion may reinstate the temporarily voided Agreement(s).

6.13 Certifications

6.13.1 Lobbying.

The Qualified Vendor shall submit the Certification Regarding Lobbying form, and by so doing, agrees to compliance with 49 CFR Part 20. The Certification Regarding Lobbying form may be found in Section 9 as “Attachment C”.

6.13.2 Suspension or Debarment.

In addition to the terms and conditions in Section 6, the Qualified Vendor shall submit the Certification Regarding Debarment, Suspension and Voluntary Exclusion Lower Tier Covered Transactions form, which may be found in Section 9 as “Attachment D”.

6.13.3 Inclusive Qualified Vendor.

The Qualified Vendor is encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. This could include subcontractors for a percentage of the administrative or direct service being proposed. The Qualified Vendor who is committing a portion of its work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning the Qualified Vendor’s utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of Agreement utilization and how this effort will be administered and managed, including reporting requirements.

6.13.4 Data Sharing.

When determined by the Department that sharing of confidential data will occur with the Qualified Vendor, the Qualified Vendor shall complete the ADES Data Sharing Request Agreement and submit the completed Agreement to the DES Program Designated Staff prior to any work commencing or data shared. A separate Data Sharing Request Agreement shall be required between the Qualified Vendor and each DES Program sharing confidential data. The Data Sharing Request Agreement form may be found in Section 9 as “Attachment E”.